84-864

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Case No. ~~84-864~~

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

MILLER BREWING COMPANY,

Petitioner,

BREWERY WORKERS LOCAL UNION
NO. 9, DIRECTLY AFFILIATED
LOCAL UNION, AFL-CIO,

Respondent.

**ON PETITON FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

RESPONDENT'S REPLY TO SUPPLEMENTAL BRIEF OF PETITIONER

JAMES P. MALONEY
Counsel for Respondent

828 North Broadway
Suite 410
Milwaukee, WI 53202
(414) 276-4557

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This response is filed by the Respondent, BREWERY WORKERS LOCAL UNION NO. 9, DIRECTLY AFFILIATED LOCAL UNION, AFL-CIO, and is in reply to the Supplemental Brief of the Petitioner filed this date. Contrary to the assertion of the Petitioner herein, the facts and circumstances surrounding the

Decision in Brewery Workers Joint Local Executive Board, International Brotherhood of Teamsters, et al. and Anheuser-Busch, Inc., Case No. 22-CB-4995 (November 20, 1984) are not identical to the facts and circumstances involved in this litigation. It is the unique factual circumstances involved here which not only distinguish the present case from the Decision of the Administrative Law Judge but also dictate the denial of the requested Petition for Certiorari of the MILLER BREWING COMPANY.

Here, unlike the Anheuser-Busch Decision, Miller and Schlitz were members of a multi-employer bargaining association whose contract with the union provided that laid off regular employees of another employer member of the association were to be recalled before an employer could recall its own temporary employees. In 1981 Schlitz withdrew from the multi-employer association and joint bargaining. Also in 1981, the remaining members of the association, including Miller, entered into a contract with the union and gave a hiring preference over new employees to "laid off regular employees of the employer signatory to the 1971-81 agreement."

This clause, as noted, encompassed Schlitz employees. Shortly after the withdrawal, Schlitz ceased operations and its laid off employees applied for employment at Miller. Miller filed a charge alleging that the clause violated §8(b)(1)(a) and (2) of the Act. In denying Miller's appeal of the Regional Director's dismissal of the charge, the General Counsel of the NLRB set forth the following rule:

> The union ordinarily would have no authority to compel an employer to hire laid-off employees from another unit covered by a separate union contract before recalling its own temporary employees. . .

However, based upon the particular circumstances, the General Counsel determined that that principle was not applicable because:

> In light of the longstanding multi-employer single unit bargaining relationship of the employees involved herein, and the fact that Schlitz completely ceased operations shortly after its withdrawal

> from the multi-employer bargaining association, hereby permanently laying off employees who had until very recently been a part of the multi-employer unit, it was determined that these circumstances gave rise to lingering bargaining unit interests on the part of laid-off Schlitz employees which the Union could legitimately seek to protect by demanding that Miller hire the laid-off Schlitz employees.

Clearly, the peculiar and particular circumstances in this present litigation gave rise to "lingering bargaining unit interests on the part of laid-off Schlitz employees." Such lingering bargaining unit interests were not present in the Anheuser-Busch decision. It was the unique and peculiar factual circumstances which dictated the Regional Director and General Counsel's decision in the present case. The factual circumstances differ markedly from those circumstances in the Anheuser-Busch case.

In Anheuser-Busch, the company involved withdrew from the multi-employer bargaining unit 14 years prior to the board charge and, there had been no multi-employer bargaining unit for the last 11 years. Additionally, in the present case, the employer at which the preferential rights were sought (Miller) remained a member of the multi-employer unit. In Anheuser-Busch, it was the employer at which the preferential rights were sought (Anheuser Busch) which had disavowed and withdrew from the multi-employer bargaining unit 14 years earlier. In those circumstances, the Administrative Law Judge determined that the unions there could not legitimately claim "lingering bargaining unit interests."

Consequently, the unique factual and temporal circumstances out of which the present litigation arises not only distinguishes this litigation from the Anheuser-Busch decision but, in addition, demonstrate that no purpose can be served by further review. In any event, as noted, the Decision in Anheuser-Busch is simply the decision of an Administrative Law Judge which is presently on appeal before the National Labor Relations Board.

CONCLUSION

In light of all the foregoing, the Respondent respectfully urges that this Court deny the Petition of the MILLER BREWING COMPANY for Writ of Certiorari.

Respectfully submitted this 10th day of January, 1985.

JAMES P. MALONEY
Counsel of Record
Attorney for Respondent,
Brewery Workers Local Union
No. 9,
D.A.L.U., AFL-CIO

James P. Maloney
828 North Broadway
Suite 410
Milwaukee, Wisconsin 53202
(414) 276-4557